UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,927	12/22/2001	Celine Yonghong Wang	100.271US01	9877

34206	7590	03/23/2006

FOGG AND ASSOCIATES, LLC
P.O. BOX 581339
MINNEAPOLIS, MN 55458-1339

EXAMINER
ELALLAM, AHMED

ART UNIT	PAPER NUMBER
2616	

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 January 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1.   Claims 1-4, 10,11-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 1, the specification does not adequately describe the claimed "establishing a permanent virtual circuit between the switch and the remote node based on the embedded information". More specifically, the specification doesn't describe how the PVC is established. For example the it is recited in the specification that:

> At block 204, the process embeds information on a permanent virtual connection between switch 108 and remote node 106 into a packet, e.g., an ATM cell for transmission over network 102. In one embodiment, the information that is embedded in the data packet is embedded in the destination address and includes slot, port, VPI and VCI information for the permanent virtual connection. At block 206, the process transmits the packet with embedded information over a switched virtual circuit through network 102. In one embodiment, this packet is sent over a static connection under the IISP protocol. At block 208, the process sets up the permanent virtual circuit between switch 108 and remote node 106 based on the embedded information. The method ends at block 210.

From the above statement, it is not clear how the process "sets up the permanent

virtual circuit between switch 108 and remote node 106 based on the embedded

information".

Claims 2-4 depends from claim 1, thus they are subject to the same rejections.

Regarding claim 10, the specification does not adequately describe the claimed

"establishing a permanent virtual circuit between the switch and the remote node

based on the at least slot, port, VPI and VCI information to complete the end-to-end

connection". The specification doesn't describe how the PVC is established based on

the embedded information for similar reasons as indicated above with reference to

claim 1.

Claim 11 suffers from the same deficiencies as in claim 1, thus it is subject to the

same rejections.

Claims 12-14 depends from claim 11, thus they are subject to the same

rejections.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Admitted Prior Art in view of Bosloy et al; US006714544B1. Hereinafter referred to as

APA and Bosloy respectively.

Regarding claim 1, the APA disclose a method for establishing an end-to-end virtual circuit in a data network comprising:

Established soft permanent virtual circuit between customer premises equipment (CP) over a network with an ISP (claimed remote node) that is connected to another switch (claimed switch) in the network, wherein the established connection comprises:

A permanent virtual connection between the CP equipment and a DSALM over a telephone line, see [05];

A static connection between DSLAM and the switch connected to the ISP, see paragraph [06];

A permanent virtual connection between the switch and the ISP, see paragraph [05];

(Examiner interpreted the established connection of prior art of being preceded by corresponding establishing steps, because that is required for the connection setup).

The prior art doesn't specify embedding information for the permanent virtual connection between the switch and the ISP in a packet transmitted over the static connection in a network for the establishment of a permanent virtual circuit between the switch and the ISP.

However, Bosloy discloses a command having embedded information for establishing a permanent virtual connection. See column 5, lines 40-55. (The

command having the information is interpreted as being the claimed packet having embedded information because the command is an ATM packet).

It would have been obvious to a person of ordinary person in the art to send a command for establishing the permanent virtual circuit as taught by Bosloy in the system of APA for establishing the APA connection between the switch and the ISP from the source endpoint (CP) to the destination endpoint (ISP) so that end-to-to-end permanent virtual connection of APA can be realized between the switch and the ISP using command signaling content. The motivation would be the recognition of using available methods in establishing end-to-end virtual connections in the system of prior art.

Regarding claim 2, Bosloy discloses that the embedded information comprises VCI/VCI information, see column 5, lines 45-48). (Claimed embedding information comprises embedding information in the destination address, Examiner interpreted the VPI, VCI to be in the destination address of ATM command packet, as dictated by the established ATM standard).

Regarding claims 3 and 4, Bosloy discloses that the embedded information comprises slot, port, virtual path identifier (VPI) and virtual channel identifier (VPI) for a permanent virtual circuit. See column 5, lines 40-48.

Regarding claims 5 and 10, the APA discloses conventional DSLAM located at a central office of a telephone company, the DSLAM includes: a number of different cards, at least one line card that provides connection to the data network over one or more high capacity lines, a number of channel cards that provide connection to a

number of modems over a number of telephone lines, see paragraph [04]. APA further

discloses having established soft permanent virtual circuit between customer premises

(CP) over the network with an ISP (claimed remote node) that is connected to another

switch (claimed switch) in the network, wherein the established connection comprises:

A permanent virtual connection between the CP equipment and a DSALM over a

telephone line, see [05];

A static connection between DSLAM and the switch connected to the ISP, see

paragraph [06]; (claimed static connection in the data network between at least one

line card and the switch);

A permanent virtual connection between the switch and the ISP, see paragraph

[05];

(Examiner interpreted that corresponding establishing steps precede the established

connection of prior art, because that is required for the connection to be established).

The prior art doesn't specify information "for" the permanent virtual connection

between the switch and the ISP is embedded in a packet transmitted over the static

connection between a line card and the switch, as in claim 5 and establishing the

permanent virtual circuit between the switch and the ISP based on at least slot, port,

VPI and VCI information to complete the end-to-end connection as in claim 10.

However, Bosloy discloses a command having embedded information for

establishing permanent virtual connection. See column 5, lines 40-55. (The command

having the embedded information is interpreted as being the claimed packet having

embedded information because the command is an ATM packet). It would have been

obvious to a person of ordinary person in the art to reverse the sending of command

signaling for establishing the permanent virtual circuit of that taught by Bosloy in the

system of APA for establishing the APA connection between the switch and the ISP so

that end-to-to-end permanent virtual connection of APA can be realized between the

switch and the ISP using command signaling content. The motivation would be the

recognition of using available methods in establishing end-to-end virtual connections in

the APA system.

Regarding claim 6, APA discloses a channel card that support ADSL, see

paragraphs [02] and [04].

Regarding claim 7, Examiner interpreted the command having the embedded

information of being the claimed packet having embedded information in the

destination address of the packet, because the command is an ATM packet, and

information usually (VPI/, VCI, port etc...) is inserted in the destination address portion

of the ATM packet by standard (ATM Forum).

Regarding claims 8 and 9, Bosloy discloses that the embedded information

comprises slot, port, virtual path identifier (VPI) and virtual channel identifier (VPI) for a

permanent virtual circuit. See column 5, lines 40-48. (The command having the

embedded information is interpreted as being the claimed packet having embedded

information because the command is an ATM packet, the VPI/, VCI, port etc... are

inserted in the destination address portion of the ATM packet by standard).

Regarding claims 11-14, claims 11-14 have limitations of rejected claims 6 and 8,

thus they are subject to similar rejections.

Response to Arguments

3.   Applicant's arguments filed 01/27/2006 have been fully considered but they are

not persuasive:

Examiner objections to the disclosure and claim 5, have been withdrawn in view

of the Amendment.

Rejections under 35 USC § 112:

Applicants gave a case law to overcome Examiner rejections under 112 1st

paragraph, but fail to give an example of how the embodiment of the invention works..

That is Applicants fail to explain and give evidence on how the permanent virtual circuit

between the switch and the remote node is established based on the embedded

information. Applicants' conclusion that a person of skill in the art would knows how to

set up the permanent virtual circuit using the embedded information, e.g., slot, port,

VPI and VCI, is a mere conclusion and is not considered an factual evidence.

Applicants asserted that the Examiner's argument fails to meet the initial

burden of explaining why the Examiner doubts the accuracy of claims 1-4. In response

to Applicants, a reasonable explanation would be the missing steps in selecting a

specific slot, port, VPI and VCI for a given subscriber, and on what basis the slot and

port and VPI are determined? and how the permanent virtual circuit is established

between the switch and the remote node, how the remote node is selected among

other nodes (ISPs of figure 1)?

Applicant may submit factual affidavits under 37 CFR 1.132 or cite references to

show what one skilled in the art knew at the time of filing the application. A declaration

or affidavit is, itself, evidence that must be considered. The weight to give a declaration

or affidavit will depend upon the amount of factual evidence the declaration or affidavit

contains to support the conclusion of enablement. In re Buchner, 929 F.2d 660, 661,

18 USPQ2d 1331, 1332 (Fed. Cir. 1991) ("expert's opinion on the ultimate legal

conclusion must be supported by something more than a conclusory statement"); cf. In

re Alton, 76 F.3d 1168, 1174, 37 USPQ2d 1578, 1583 (Fed. Cir. 1996) (declarations

relating to the written description requirement should have been considered).Emphasis

added.

Rejections under 35 USC § 103:

Applicants' statement with regard to the specification paragraph [06] is noted.

Applicants also indicated that *"any connection taught in APA relates to using a static*

routing protocol between a multiplexer [the DSLAM] and a switch and not for "a

permanent connection between a switch and a remote node". Emphasis added.

In response, Examiner notes that the statement that the APA relates to using a

static routing protocol between a multiplexer and a switch and not for "a permanent

connection between a switch and a remote node is true. However, Examiner asserts

that since the static connection of APA is being established, Bosloy is used to

complement for the missing permanent connection between the switch and a remote

node of the prior art, because the command of Bosloy has embedded information for

establishing a permanent virtual connection, the command being an ATM packet,

which is similar to the "embedded information" in the packet of the invention. See

column 5, lines 40-55. Moreover Bosloy discloses that the embedded information

comprises slot, port, virtual path identifier (VPI) and virtual channel identifier (VPI) for a

permanent virtual circuit, which is exactly similar to Applicant's embedded information

in the ATM packet. See column 5, lines 40-48.

The argument that Bosloy uses the PNNI signaling and teaches away from APA

that uses IISP protocol is irrelevant given the similarities of Bosloy's embedded

information to that of Applicants. Thus in response to Applicants' argument that the

references fail to show certain features of applicant's invention, it is noted that the

features upon which Applicants relies (IISP and not PNNI protocol) are not recited in

the rejected claim(s). Although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims. See In re Van Geuns,

988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As t o claims 5 and 10, Applicants have similar remarks as in claim 1, thus the

argument is not persuasive for similar reasons indicated above with regard to claim 1.

Examiner believes, given the most reasonable broadest interpretation of the

claimed limitations, the rejection above is proper.

Conclusion

4.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).   .

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to AHMED ELALLAM whose telephone number is (571)

272-3097. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kizou Hassan can be reached on (571) 272-3088. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR

only. For more information about the PAIR system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AHMED ELALLAM
Examiner
Art Unit 2668
3/19/06

HASSAN KIZOU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600